

No. 9/9/86-6Lab./4285.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Chief Administrator, Faridabad Complex Administration, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 195/1982

between

SHRI RAM DHAN, WORKMAN AND THE MANAGEMENT OF M/S CHIEF ADMINISTRATOR,
FARIDABAD COMPLEX ADMINISTRATION, FARIDABAD

Present.—

Shri S. S. Gupta, for the workman.

Mrs. Ranjana Sharma, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ram Dhan, workman and the management of Chief Administrator, Faridabad Complex Administration Faridabad to this Tribunal for adjudication :—

Whether the termination of service of Shri Ram Dhan was justified and in order?
If not, to what relief is he entitled ?

2. Notice were issued to both the parties. In the claim statement dated 2nd July, 1982, it was alleged that the claimant was working with the respondent as Octroi Clerk since 11th October, 1978 and was drawing a salary of Rs. 578, per month. It was further alleged that the termination of services of the claimant,—vide order dated 18th May, 1981 was illegal and as such the claimant was entitled to reinstatement with full back wages.

3. The management in its written statement dated 26th July, 1982 pleaded that the respondent management was not an industry as defined in the Industrial Disputes Act, 1947. It was further pleaded that the claimant was engaged against leave vacancy and his services were terminated on 1st May, 1979 as per terms of appointment. It was further pleaded that again an *ad hoc* vacancy was caused and the claimant was appointed on 18th May, 1979 against the said *ad hoc* vacancy, which period was extended from time to time and ultimately the services of the claimant were terminated in accordance with the rules.

4. The claimant in his rejoinder dated 23rd August, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 24th August, 1982 :—

- (1) Whether the respondent management is not an industry as defined in the Industrial Disputes Act, 1947 ? OPM
- (2) Whether the termination of services of Shri Ram Dhan was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the management examined two witnesses and documents Ex.M-1 to M-22 have been tendered into evidence. The claimant appeared in the witness-box and the documents Ex.W-1 to W-3 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

Issue No. 1

7. The definition of industry as given in Section 2(j) of the Industrial Disputes Act, 1947

prior to amendment made in 1984 runs thus :—

“Industry” means any business, trade undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

The institution in which the claimant was employed prior to termination of his service on 23rd May, 1981, therefore, falls in the above definition of ‘industry’. The issue is decided accordingly against the management.

Issue No. 2

8. The management has examined Shri Kanwar Pal Singh as MW-1, who stated that the claimant was appointed in a leave vacancy on *ad hoc* basis,—*vide* letters Ex. M-1 to M-3. MW-2 Shri Parshotam Dass stated that the claimant was appointed on three months’ basis as Clerk,—*vide* letter Ex. M-3, which term was extended from time to time,—*vide* letters Ex. M-4 to M-9 and that letter Ex. M-10 was his relieving order. He further stated that the name of the claimant was never sponsored by the Employment Exchange and that the letters Ex. M-11 and M-12 contained the instructions regarding candidates sponsored by the Employment Exchange. He further stated that the claimant was again appointed,—*vide* letter M-17. He further stated that the documents Ex. M-18 and M-19 were his joining reports. This witness proved the letter Ex. M-10 by which the services of the claimant was terminated on 18th May, 1981. The remaining documents up to Ex. M-21 have also been proved by this witness.

9. Shri Ram Dhan claimant WW-1 stated that he was employed on 11th August, 1978 and was turned out on 22nd May, 1981. He further stated that no compensation was paid to him. He has proved the documents Ex. W-1 to W-3, and stated that no charge-sheet was given to him.

10. A perusal of the above evidence would show that the claimant was appointed on *ad hoc* basis on 11th August, 1978 for a period of 3 months,—*vide* letter Ex. M-20 which period was extended from time to time,—*vide* letters Ex. M-16, M-6 and M-4,—*vide* letter Ex. M-17 the claimant was relieved of his duties with effect from 1st May, 1979. The document Ex. M-5 shows that the claimant was re-appointed on *ad hoc* basis for a period of three months with effect from 26th May, 1979 and Ex. M-8 is the copy of the joining report. The said period was extended from time to time,—*vide* letters Ex. M-7, Ex. M-8 and M-9. Ultimately, the services of the claimant were terminated on 18th May, 1981, *vide* letters Ex. M-10, but he was relieved on 23rd May, 1981 as mentioned in the claim statement. It is thus apparent that the claimant remained in service of the respondent on *ad hoc* basis in the first instance from 11th August, 1978 to 1st May, 1979 and again from 26th May, 1979 to 23rd May, 1981. It is apparent that while serving for the second time from 26th May, 1979 to 23rd May, 1981, he had rendered more than 240 days continuous service in a year. Moreover, MW-2 Shri Parshotam Dass MW-2 admitted in cross-examination that the claimant worked continuously from 24th May, 1980 to 23rd May, 1981. According to this witness, the claimant rendered more than 240 days continuous service in a year. The provisions of section 25-F of the Industrial Disputes Act, 1947 are thus attracted to the facts of the present case.

11. It was argued by the representative of the claimant that since these provisions were not complied with, therefore, the claimant was entitled to reinstatement with full back wages. The representative of the management, on the other hand, placed reliance on the ruling reported as **State Bank of India vs. M. V. Raval**, 1981 S. L. R. (I) page 831 in which it is laid down that the workman was not entitled to reinstatement for violation of ‘Sastry Award’. This ruling is distinguishable on facts because the ‘Sastry Award’ does not apply to the facts of the present case. However, the claimant is not entitled to reinstatement because he was an *ad hoc* employee, but should be given compensation equivalent to two years’ wages, which he was drawing on 23rd May, 1981. The award is passed accordingly.

Dated: the 3rd May, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement. No. 310, dated the 5th May, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.